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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re C.R. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

LISA R.,

Defendant and Appellant.

G042847

(Super. Ct. Nos. DP014963 &
DP014964)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Douglas Hatchimonji, Judge. Affirmed.

Lauren K. Johnson, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and
Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

INTRODUCTION

The juvenile court terminated the parental rights of Lisa R., the mother of C.R. and Joseph R., now 10 and nine years of age, respectively. On appeal, Lisa raises a single issue: whether the court erred in finding C.R. and Joseph were adoptable. We conclude substantial evidence supports the court's findings that the children were generally adoptable based on their ages, physical conditions, and emotional states, and that they were specifically adoptable because they were placed with a foster family that had committed to adopting them, along with their older brother. We therefore affirm the court's judgment.

PROCEDURAL HISTORY¹

C.R. and Joseph, then six and five years of age, respectively, were taken into protective custody in March 2007. The juvenile court found by a preponderance of the evidence that it had jurisdiction over C.R. and Joseph pursuant to Welfare and Institutions Code, section 300, subdivisions (b) and (j). At a separate dispositional hearing, the court found by clear and convincing evidence that vesting custody of the children with Lisa and alleged father Antonio R. would be detrimental to the children's best interests, and vested custody in the Orange County Social Services Agency (SSA).

¹ In light of the limited nature of the issue raised by Lisa on appeal, we need not set forth the facts leading to the children's detention and dependency, nor the specifics of the services provided to Lisa during the proceedings or her performance of her case plan. The facts relating to the adoptability of C.R. and Joseph are set forth in the discussion section, *post*.

In April 2008, the juvenile court terminated reunification services to Lisa and scheduled a hearing pursuant to Welfare and Institutions Code section 366.26 to select a permanent plan for the children. The permanency hearing occurred in November 2009. Antonio agreed to termination of his parental rights. The court admitted into evidence SSA's permanency hearing reports and the social worker who prepared those reports was cross-examined by Lisa's counsel.

At the conclusion of the hearing, the juvenile court made the following findings: "[T]he court would find by clear and convincing evidence that both of the children involved in this matter are adoptable, they are both generally adoptable by way of their characteristics as described by the social worker in her testimony today as well as in the reports that are before the court. [¶] Further the evidence is that these children are specifically adoptable by the current caretakers of the children who have expressed their commitment to adopt these two children in connection or in conjunction with their desire to adopt [C.R.] and Joseph's sibling, Anthony; and further the reports reflect that [C.R.] and Joseph wish to be adopted by these caretakers in part because they wish to remain with their sibling Anthony." The court then found that no exception to termination of parental rights existed, and found that termination of parental rights and adoption were in the children's best interests. The court therefore terminated Lisa and Antonio's parental rights. Lisa timely appealed.

DISCUSSION

"The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citations.] In making this determination, the juvenile court must focus on the child, and whether the child's age, physical condition, and emotional state may make it difficult to find an adoptive family. [Citations.] In reviewing the juvenile court's order, we determine whether the record contains substantial evidence from which a

reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time. [Citations.]’ [Citations.] We give the court’s finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. [Citation.]” (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561-1562.)

The juvenile court’s finding that C.R. and Joseph were adoptable was supported by substantial evidence. The court had before it SSA’s permanency hearing report, which reads in relevant part as follows: “On August 26, 2009, a Permanency Planning Assessment (PPA) was received from Kathy Moch, Senior Social Services Supervisor (SSSS), who assessed the children, noting that based on their characteristics/attributes, it is probable that the children will be adopted, however the children are difficult to place as the children are members of a sibling set, and they are seven years old, or older. [¶] The case will be assigned to an Adoptions Home Study worker to assess the current caregivers’ home. The caregivers have had placement of Anthony R[.], the children’s older brother, for the past two years and have steadfastly stated that they wish to adopt all three children.”²

² An earlier permanency hearing report included the following summary regarding the likelihood of adoption for C.R. and Joseph: “The Adoptions [Senior Social Worker] found [C.R.] to be a beautiful little girl with sweet brown eyes and long dark hair. She is a healthy active child, who enjoys playing games outside, such as kickball. She also likes girly activities such as playing with dolls and doll houses. Her favorite food is pizza. [C.R.] has been described as friendly and outgoing, although her exuberance can be tempered with some episodes of crying, withdrawal from peers and failure to complete her school work. [C.R.] did qualify for special education due to her academic difficulties. [¶] Joseph is an adorable boy, with big brown eyes and brown hair. He often wears a big smile, and appears to be friendly and affectionate. Joseph loves spaghetti, pizza, and anything with ketchup on it. As is often the case with boys, he also enjoys playing video games. Joseph has a history of exhibiting tantrums, and becoming irritable and sensitive to the actions of others. He has yelled at others, including his sibling, as well as kicked a wall when he was frustrated. Joseph has an [Individualized Education Program (IEP)] for speech and language delays, which may add to his frustration. [¶] . . . [¶] It is challenging to locate an adoptive home for a sibling set of three, with all three being over the age of

Lisa's counsel cross-examined the social worker who prepared the reports.

"Q. . . . Has your agency examined whether or not these children are adoptable?

"A. Yes.

"Q. And what factors have you considered?

"A. In what regard?

"Q. Whether or not the children are adoptable. And we'll take the children individually. How about we start with Joseph.

"A. Joseph's age and lack of behaviors or medical issues would make him adoptable.

"Q. And regarding the girl.

"A. [C.R.] also is a good age for adoption and does not have any major behavioral or medical issues.

"Q. Does the fact that they're a sibling set make it more difficult to place them?

"A. Difficult but not impossible. [¶] . . . [¶]

"Q. Has the current placement committed to adopt these children?

"A. Yes.

"Q. Is there a sibling of the children already in this placement?

"A. Another sibling, yes."

Lisa relies on misinterpretations of the record and reference to old data to support her argument that there was not substantial evidence of C.R. and Joseph's

seven. However, it is in the children's best interests to be placed together. And, while the children are considered difficult to place, they are all attractive, engaging, healthy, and have no major medical, cognitive or emotional impairments, all adding to their adoptability."

adoptability. Lisa claims C.R. and Joseph had a history of failure in their foster care placements. The children's first foster care placement ended because the foster parents were experiencing "financial and health concerns." The children's penultimate foster placement ended at the foster parents' request because "[t]hey were having issues with their own child in the home in relation to [C.R. and Joseph]." However, the children were moved to the current placement with their sibling, and with the family that desired to adopt all three of them.

Lisa focuses on the fact that no placements for C.R. and Joseph were found despite placing their pictures in a local parenting magazine and on an adoption Web site. Again, Lisa fails to recognize that regardless of what did or did not happen in the past, at the time of the permanency hearing, C.R. and Joseph were placed with prospective adoptive parents who had committed to adopt them and their brother.

Lisa also focuses on C.R. and Joseph's behaviors and other problems dating to the inception of the dependency proceeding as proof that the children were not adoptable. At the time of the permanency hearing, there was substantial evidence that C.R. and Joseph were young, physically and emotionally healthy, progressing appropriately in school and at home, and could develop positive interpersonal relationships. (See *In re Gregory A.*, *supra*, 126 Cal.App.4th at p. 1562.) In the permanency hearing report, C.R. was described as "developmentally on target for her age." C.R. had asthma, for which she was prescribed an inhaler, and myopia, for which she wore corrective lenses. C.R.'s most recent report card reflected two C's, three B's, and one A. The report noted, "[t]he child's effort is always listed as good and the child is shown to be making appropriate progress in most areas with concern listed for spelling, word recognition and comprehension. The teachers stated the child has a strength in citizenship and listening and following directions." C.R. was receiving services through an IEP. C.R. saw a therapist to address issues of parentification and "expressing difficult

feelings and thoughts.” C.R. had made progress in her “struggles with issues of power and control”

Joseph wore prescription glasses, but otherwise had no medical problems. A developmental assessment revealed that “Joseph’s verbal skills are less efficient than his nonverbal skills. Joseph’s visual-motor integration skills appear to be within the low average range. Joseph’s fine motor skills need some work, but Joseph’s gross motor skills are great.” Joseph was proficient and meeting grade level standards in all academic classes, and was “giving good effort in History, Science, Health, Visual Arts, Music/Performing Arts, Physical Education, Technology, Work Habits, and Citizenship.” Joseph also had an IEP. Joseph’s individual therapist reported that he “displays a sense of inferiority as evidenced by the child [resorting] to baby talk or seeking negative attention when faced with a new or difficult situation. The child is developing his sense of industriousness through his accomplishments and taking an interest in sports.” Lisa’s brief fails to mention most of the facts set forth in these two paragraphs.

The cases cited by Lisa in support of her argument are inapposite. In *In re Brian P.* (2002) 99 Cal.App.4th 616, the Alameda County Social Service Agency’s assessment that Brian was adoptable was not supported by substantial evidence. The Agency’s reports and the social worker’s testimony did not include any evidence regarding specific adoptability (*id.* at p. 624), and as to general adoptability the “fragmentary and ambiguous evidence was not enough to buttress the Agency’s position that Brian was adoptable” (*id.* at p. 625). In *In re Asia L.* (2003) 107 Cal.App.4th 498, there was “no identified prospective adoptive parent at this time” (*id.* at p. 511), the children required “specialized placement” which was not available in the county in which the dependency proceeding was pending (*id.* at p. 512), and the foster parents had only expressed a “willingness to explore the option of adopting” (*ibid.*). In *In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 803, the juvenile court found the social services agency had failed to show by clear and convincing evidence that Tamneisha was likely to be adopted,

and therefore appointed her foster parents as her legal guardians. Tamneisha suffered from severe asthma, was mildly delayed in mental and motor development, and “periodically displayed abnormal behavior” (*Id.* at p. 802.) Further, although a potential adoptive family had been “matched” to Tamneisha, the juvenile court stated, ““showing an interest is a long hue and cry away from findings of clear and convincing evidence most likely that the child will be adopted if I sever parental rights today.”” (*Id.* at p. 803.) In each of these cases, the problems faced by the dependent children were far more significant than those currently faced by C.R. and Joseph, and in none of them was the dependent child currently placed in a home with a prospective adoptive parent who had committed not only to adoption, but to adopting the dependent child’s sibling to maintain the sibling set.

Lisa complains of the lack of a “comprehensive Adoption Assessment Report”; this issue has been waived by the failure to raise it in the juvenile court. (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-412.) Lisa cites *In re Gregory A.*, *supra*, 126 Cal.App.4th at page 1561; *In re Brian P.*, *supra*, 99 Cal.App.4th at page 623; and *In re Erik P.* (2002) 104 Cal.App.4th 395, 399-400, but those cases stand for the proposition that the failure to object to defects in the adoption assessment, or to the social service agency’s reports, or generally to adoptability at the permanency hearing, does not waive the right to challenge a finding of adoptability on appeal. There is no argument by SSA in this case that Lisa has forfeited her argument that C.R. and Joseph were not adoptable; it is only her argument that an adoption assessment was not prepared that has been forfeited.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

SILLS, P. J.

BEDSWORTH, J.